

November 9, 2010

Kathryn Benz  
U.S. Environmental Protection Agency Headquarters  
Office of Water  
Office of Wetlands, Oceans, and Watersheds  
Mailcode: 4504t  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

**Via E-Mail [msdstandards-hq@epa.gov]& Regulations.gov**

**Re: Clean Water Act Section 312(b): Notice Seeking Stakeholder Input on Petition and Other Request to Revise the Performance Standards for Marine Sanitation Devices – EPA-HQ-OW-2010-0126; FRL-9174-2**

Dear Ms. Benz:

The National Marine Manufacturers Association (NMMA) appreciates this opportunity to provide stakeholder input on the petition and request to revise the performance standards for marine sanitation devices.<sup>1</sup> NMMA is pleased that EPA is taking a close look at revising the standards for Marine Sanitation Systems (MSDs). Boaters are keenly aware of the state of our nation's waters and want to be responsible stewards of this important resource. The recreational boating community has encouraged EPA to revise its MSD performance standards for Type I devices, so that the standards can better reflect the current technology. Importantly, NMMA supports a change to the Type I standards only if it would be phased in to apply the installing of new devices and allow the sale of existing stocks. NMMA would not support individual boaters being forced to replace MSD systems currently in use on their boats. NMMA offers the following comments to assist EPA in evaluating the petition and request to revise the performance standards for MSDs.

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<sup>1</sup> *Clean Water Section 312(b): Notice Seeking Stakeholder Input on Petition and Other Request to Revise the Performance Standards for Marine Sanitation Devices*, [75 Fed. Reg. 39,683](#) (Notice of petition and other request for rulemaking; request of comments)(July 12, 2010); *see also* 40 C.F.R. 140.3.

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## I. BACKGROUND ON THE TYPES OF MSDS

As you know, there are two major MSD devices (Type I and Type III) that are typically found in recreational vessels. Type I MSD devices, allowed on vessels 65 feet or less, are devices that under test conditions described in 33 CFR 159.123 and 125 discharge an effluent having a fecal coliform bacteria count not greater than 1,000 per 100 milliliters and no visible solids. Type III MSD devices are designed to hold sewage or water derived from sewage (*e.g.*, a holding tank). This wastewater is pumped out and later treated by on shore treatment devices. Many recreational boats use a hybrid system which is typically a small holding tank coupled with a Type I MSD.

Type II MSDs are less frequently found in recreational vessels due to their size and the smaller number of vessels over 65 feet in length. A Type II device is one that under test conditions described in 33 CFR 159.126 and 159.126a discharge an effluent having a fecal coliform bacteria count not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligram per liter.

## II. NUMBERS OF RECREATIONAL BOATS WITH INSTALLED TOILETS AND MSDS

In 2008, there were 12.7 million recreational boat registrations in the U.S.<sup>2</sup> The vast majority of recreational vessels are not of a size or type that would include either an installed toilet or Type I or II MSD on board. Most recreational boats, even among those mechanically propelled, are small enough to be trailered – that is less than 26 feet in length. *See* NMMA, 2009 Statistical Abstract (Table 6.8) (Over 95 percent of registered mechanically propelled boats are under 26 feet in length). Below is a breakdown of the recreational boat registration numbers by size.

<b>Mechanically Propelled Boat Registrations by Length - 2008</b>	
Smaller than 16 feet	4,989,889
16 to less than 26 feet	6,267,480
26 to less than 40 feet	501,579
40 to 65 feet	70,819
Over 65 feet	11,514

NMMA searched for existing sources of information that would provide hard data on the number of vessels either existing or new construction that have different types of sanitation systems. Unfortunately, NMMA was unable to find any relevant sources. In order to obtain some estimates, NMMA sent a survey to our Traditional Powerboat Control Group that NMMA uses

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<sup>2</sup> There were also 241,700 documented recreational vessels in the U.S. in 2008. However, 109,744 of these vessels were also state registered.

to produce much of its recreational boating statistics. NMMA asked the Control Group the following questions:

- On average, what percentage of boats do you build in the 22' – 26' inclusive range have toilets installed?
- On average, what percentage of total boats produced are equipped with a Type I sanitation device?
- On average, what percentage of total boats produced are equipped with a Type II sanitation device?

Seventy manufacturers were surveyed and 20% of the Control Group or 13 manufacturers responded. Based on this survey and other information provided by MSD manufacturers, NMMA can provide an estimate to EPA. NMMA has extrapolated these numbers and applied them to the current fleet of recreational boats. Boaters may add or change an MSD system over the life of the boat which would affect these estimates. It is also assumed that for boats where a Type I or II device is not installed, and the boat is of the type that would have an installed toilet, that a Type III holding tank would necessarily be installed in the boat.

**NMMA estimates that nine percent of traditional power boats (952,500) have toilets installed.** In arriving at this number, NMMA is assuming that all boats greater than 26 feet in length are equipped with toilets and based on survey responses that 26% of boats 22 feet to 26 feet have toilets.

**Of those boats equipped with toilets, NMMA's initial estimate is that 9% (85,700) have Type I MSD systems and 0.01% (1,000) have Type II MSDs.**

This survey and analysis confirms NMMA initial impression that the vast majority of recreational vessels (less than 65 feet in length), if equipped with MSDs, would be equipped with a Type I MSD system, a Type III holding tank, or a hybrid of both a Type I and holding tank system. It is therefore NMMA's view that any effort to address recreational vessel MSD discharges would more appropriately be focused on the Type I discharge standards.

### **III. USE PATTERNS SHOULD BE EVALUATED WHEN CONSIDERING MSD REGULATIONS FOR RECREATIONAL BOATERS**

**Recreational boaters differ from commercial operators in a significant way – they use their leisure time to participate in boating activities.** As a result, boaters use their vessels much less than commercial vessel operators. NMMA data has shown that boating habits are impacted by the economy and time constraints. Nearly 89 percent of current boat owners took their watercraft out on the water in 2009. *See* NMMA, 2009 Statistical Abstract (Table 1.17a). Time constraints were cited as the primary reason for not boating by active boat owners (44 percent) followed by the cost of fuel for the boat (32 percent) and reduced income (26 percent). *See* NMMA, 2009 Statistical Abstract (Table 1.17c). Boats in the U.S. were used an average of 29 days in 2009. Boats smaller than 13 feet were used an average of 21 days, boats 14 feet to 29

feet were used an average of 31 days, and boats 30 feet and larger were used an average 34 days. NMMA, 2009 Statistical Abstract (Table 1.17k).

**Because of the less frequent use, recreational boaters should not be expected to do any recordkeeping of MSD system maintenance or use.** Such recordkeeping makes no sense whatsoever for recreational boaters. Informing boaters of such a requirement and then enforcing this requirement would, given the lower use rates and potential for confusion, not yield any environmental improvement.

#### **IV. SOME PERFORMANCE STANDARDS ARE OVERDUE TO BE REVISED – HOWEVER ANY CHANGES MUST BE DONE WITH AN EYE ON EXISTING TECHNOLOGY**

The current MSD Type I standards are over 30 years old and need to be revised by EPA. The recreational boating community has encouraged EPA to revise its MSD performance standards for Type I devices, so that the standards can better reflect the current technology. **Importantly, NMMA supports a change to the Type I standards only if it would be phased in to apply to the sale of new devices and allow the sale of existing stocks. NMMA would not support individual boaters being forced to replace MSD systems currently in use on their boats. Existing boats should be grandfathered into any MSD performance standard change.**

Specifically, EPA should revise the effluent standards for fecal coliform bacteria in Type I MSDs to reflect the capabilities of existing technology already available in the market place. The EPA commissioned an evaluation of Type I MSDs in 2008. The report, prepared by Eastern Research Group, Inc. summarized testing of existing Type I MSDs and found that with current technology at least one of the devices tested could remove almost all pathogen indicators (99.9% or greater). **EPA should therefore revise the current MSD – Type I performance standards for the reduction of fecal coliform bacteria from “not greater than 1,000 per 100 milliliters” to “not greater than 100 per 100 milliliters.”** Such a revision to the Type I MSD bacterial reduction would represent an overall improvement at least 10 times greater than the original and current standards and would be on the order of fecal coliform reduction requirements mandated by the IMO for ships of 400 GT or more using Type II MSDs. Revising Type I MSDs would have the most impact on the recreational vessel fleet as the vast majority of the vessels with a treatment device are less than 65 feet and therefore use a Type I device.

**Any adjustment of the performance standards should be based on data demonstrating that existing and affordable technology is available to boaters.** For these reasons, NMMA is only recommending a change in the fecal coliform standards for Type I and not the addition of new standards (such as for nutrient management). If nutrient management is a concern for a particular waterbody the current structure to develop no discharge zones will provide the necessary water quality protection. In addition, NMMA is not aware of technology at this time that can be adapted for smaller recreational vessels that can adequately address nutrient management. Sanitation device manufacturers are very interested in developing such treatment

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systems, but are constrained with the power and space considerations inherent in a smaller recreational vessel. In addition, many of the companies who operate in this field are quite small and do not have the resources to fund substantial research. This industry would welcome funding from EPA to research how to push nutrient management technology into a small footprint with low power demands so that it could be used on recreational vessels.

**V. CURRENT CLASSIFICATION SYSTEM – TYPE I, II, III AND IMO MARPOL MEPC.159**

In order to avoid unnecessary confusion, it is NMMA's recommendation that EPA not change the classification system among the various MSD Types for recreational vessels. Boaters are not professional mariners and it would be unnecessarily confusing to learn an entirely new classification system. The recreational boating industry would also prefer to maintain the existing Type II performance standards for systems installed in recreational vessels over 65 feet. The numbers of recreational vessels in that size range is small and maintaining the current standards for recreational boaters would ensure that systems are available for the recreational market. If EPA is considering adopting the IMO standards for larger vessels (e.g. over 100 feet), NMMA recommends that EPA adopt them in full without alteration.

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NMMA is the leading national recreational marine trade association, with nearly 1,500 members involved in every aspect of the boating industry. NMMA members manufacture over 80 percent of recreational boats, engines, trailers, accessories, and gear used in the United States. NMMA members manufacture MSD devices. Recreational boating contributes significantly to the U.S. economy, generating \$30.8 billion in sales and services during 2009.

NMMA stands ready to assist the U.S. Environmental Protection agency should it have any questions. Please contact me at 202-737-9766 or [csquires@nmma.org](mailto:csquires@nmma.org) for any additional information.

Sincerely,

A handwritten signature in blue ink that reads "Cindy L. Squires". The signature is fluid and cursive, with a prominent initial "C" and "S".

Cindy L. Squires, Esq.  
Chief Counsel for Public Affairs and Director of Regulatory Affairs